IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. : 1252 of 2005
Reserved on: : 4.12.2007
Date of decision : 26.12.2007

Punjab State Electricity Board and others …Petitioners.

Versus

Hydro Project Workers Union and another. …Respondents

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1] *No.*

For the petitioners : Mr. Anand Sharma, Advocate.

For the respondent No.1 : Mr. Rahul Mahajan, and
Mr. R.D.Kaundal, Advocates.

Rajiv Sharma, J.

A challenge has been laid to the award passed by the Labour Court-cum-Industrial Tribunal, Dharamshala, dated 4.8.2005 in Reference No. 40/2000 (RBT No. 381/04). The brief facts necessary for the adjudication of this petition are that the State Government has made the following reference to the Labour Court-cum-Industrial Tribunal, Dharamshala:-

> "Whether the demands raised by Shri Tek Chand, Pardhan and Shri Raj Mal, General Secretary, Hydro Project Workers' Union, Punjab State Electricity Board, shaman Power House, Joginder Nagar, with the (1) chairman, Punjab State Electricity Board, Patiala, (2) Secretary, Punjab State Electricity Board, Head Office, The Mall, Patiala, (3) Chief Engineer (Hydel) Shakti Vihar, Patiala (4) Superintending Engineer, Shanan Power House, Joginder Nagar and (5) Resident Engineer, Shanan Power House, Joginder Nagar, vide their demand charter dated 19.4.1999 (copy enclosed) are genuine and justified. If yes, which of their demands should be accepted and from which date?."

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment*?**

In sequel to the reference made by the State Government, the respondent No.1 (hereinafter referred to as ***Union*** for convenience sake) filed statement of claim. Firstly on the ground that they should be designated as Turbine Operators. Secondly, the ear defenders be provided to them and thirdly, the sound proof visible cabin inside the plant be provided by the management. The petitioner (hereinafter referred to as the management - respondent for convenience sake) filed reply to the statement of claim. The Union filed a rejoinder to the reply filed by the management. The Labour Court-cum-Industrial Tribunal passed the award in affirmative on 4.8.2005 directing the management to designate the members of the union as Turbine Operators and also provide ear-defenders as well as sound proof cabins.

Mr. Anand Sharma, counsel for the petitioners, has strenuously argued that the award dated 4.8.2005 is not sustainable. Mr. Rahul Mahajan, counsel for respondent, had supported the award dated 4.8.2005.

I have heard the parties and perused the record.

The case projected by the Union before the Labour Court-cum-Industrial Tribunal, Dharamshala, as per their statement of claim was that though the members of the Union had been appointed as Machine Attendant but in fact they had been discharging the duties of Turbine Operators and are entitled to be designated as Turbine Operators with all consequential benefits, i.e. designation of post of turbine operators from the date of their initial appointment as machine attendants and release of pay scale of the post of Turbine Operators on the principle of equal pay for equal work.

One Shri Sadhu Ram had appeared as PW-1 on behalf of the Union. He has testified that he has been working in Shanan Power House, Turbine section since 1985 as Machine Attendant. He has claimed that he should be given the post of Turbine Operator instead of Machine Attendant. He has stated in his cross-examination that in Talwara, turbine is operated by Shift Engineer and the machine attendant only works for manning load etc and in Shanan Power House they work independently. He has further stated in his cross-examination that though there is no post of Turbine Operator in Shanan Power House but Punjab State Electricity Board has created post of Turbine Operators in 1992. PW-2 Sushil Kumar, has

stated that he and his other colleagues are operating the turbines in Shanan Power House. PW-3 Shri T.R.Azad, has only brought the conciliation file of the case. The duties and qualification of the machine attendant have been enumerated vide Ext.P-1 filed with the writ petition.

RW-1 Shri Ram Singh had categorically stated before the Labour Court that there was no post of Turbine Operators as per Ext.R-1 to R-7. RW-2 Sh. Malagar Singh had testified before the Labour Court that there was no post of Turbine Operator in any power house under Punjab State Electricity Board and the machine attendants operate the machines under the supervision of the shift engineer. He has categorically denied that members of the Union are operating the turbine.

It is evident from the combined reading of statements of PWs and RWs that the members of the union had been appointed as Machine attendants. Shri Sadhu Ram has admitted that the post of Turbine Operators is not available in Shanan Power House though Electricity Board had created post of Turbine Operators in 1992. His next promotion is to the post of Foreman. PW-2 has only stated that there are Turbines in Shanan Power House and were being operated by the members of the Union. RW-1 Shri Ram Singh had stated that there is no post of turbine operator in Ext. R-1 to R-7. RW-2 has categorically stated that there is no post of turbine operators under Punjab Electricity Board and the machine attendant operates the machine under the supervision of shift engineer. The parties have produced only evidence with regard to the duties which are required to be discharged by the machine attendants. Neither the petitioners nor the management had placed any document on record disclosing the duties to be discharged by the turbine operators. It was necessary for the parties to place on record by way of evidence to disclose the duties which are being discharged by the turbine operators. In absence of any document disclosing the duties being discharged by the turbine operators the Labour Court could not come to any definite conclusion that the members of the Union were discharging the duties of turbine operators and not machine attendants. The Labour Court had only considered Ext.P-4 but has failed to take into consideration Ext.R-1 to R-7 produced by RW-1 suggesting that there was no post of turbine operator in Punjab State Electricity Board cadre strength.

The onus to prove that the workmen were discharging the duties of turbine operators instead of machine attendants was on them and not on the management. The Labour Court had come to wrong conclusion that it was for the management to disclose the duties being discharged by the turbine operators. There was no occasion for the Labour Court to draw adverse inference against the management.

Their Lordships of the Supreme Court have held in ***State of Madhya Pradesh and Another vs. Pramod Bhartiya and others, (1993) 1 Supreme Court Cases 539*** that burden to establish right to equal pay is on the person claiming the same under Articles 14 and 16(1) of the Constitution of India. Their Lordships have held as under:-

> "It would be evident from this definition that the stress is upon the similarity of skill, effort and responsibility when performed under similar conditions. Further, as pointed out by Mukharji, J (as he then was) in Federation of All India Customs and Excise Stenographers the quality of work may vary from post to post. It may vary from institution to institution. We cannot ignore or overlook this reality. It is not a matter of assumption but one of proof. The respondents (original petitioners) have failed to establish that their duties, responsibilities and functions are similar to those of the non-technical lecturers in Technical Colleges. They have also failed to establish that the distinction between their scale of pay and that of non technical lecturers working in Technical Schools is either irrational and that it has no basis, or that it is vitiated by malafidies, either in law or in fact (see the approach adopted in Federation case). It must be remembered that since the plea of equal pay for equal work has to be examined with reference to Article 14, the burden is upon the petitioners to establish their right to equal pay, or the plea of discrimination, as the case may be. This burden the original petitioners (respondents herein) have failed to discharge."

Similarly, their Lordships of the Supreme Court have held in ***State Bank of India and another vs. M.R.Ganesh Babu and others (2002) 4 Supreme Court cases 556*** that since the plea of equal pay for equal work has to be examined with reference to article 14, the burden is upon the petitioner to establish equal pay or plea of discrimination, as the case may be. Their Lordships have held as under:-

> " Since the plea of equal pay for equal work has to be examined with reference to Article 14, the burden is upon the petitioners to establish their right to equal pay or the plea of discrimination, as the

case may be. (See Federation of All India Customs and Central Excise Stenographers (Recognised) v. Union of India; State of M.P. v. Pramod Bhartiya; State of Haryana v. Jasmer Singh and State of U.P. v. Ministerial Karamchari Sangh.)"

In the present case, also the workmen had claimed designation of the post of Turbine Operator and grant of wages on the principle of equal pay for equal work as well, as per their statement of claim.

Mr. Rahul Mahajan, has strenuously relied upon Ext.P-2 dated 17.7.1982 letter addressed to the Superintending Engineer, Generation Circle PSEB, Pathankot to buttress his submissions that the workmen were discharging the duties of Turbine Operators and not as Machine Attendants. It is evident from P-2 that the workmen have been shown as Power Plant Operator Attendants and not as Turbine Operators. What designation has to be given to the particular post is a policy decision. The designation and re-designation of the post is to be done by taking into consideration the recruitment and promotion rules of a particular post more particularly the qualification and the duties to be discharged by the incumbent appointed against these posts. Consequently, it is held that the findings recorded by the Labour Court that the workmen are entitled to be redesignated as Turbine Operators is liable to be interfered by this Court.

Now, the Court has to consider the reliefs granted by the Labour Court with regard to providing of ear-defenders and sound proof cabins. Relief granted by the Labour Court with regard to these two issues need not to be interfered by this Court. The petitioner had filed affidavit dated 10th July, 2007 stating therein that the workmen had been provided with ear-defenders and sound proof cabins. Workmen had filed reply to the affidavit and had stated therein that the ear-defenders provided to them are of poor quality and the sound proof cabins are also not as per the norms prescribed. The management is directed to provide workmen with ear-defenders as per the norms prescribed and the cabins to be provided to the workmen should also meet the standard prescribed for maintaining the same within a period of three months from today.

The upshot of the above discussion is that the finding recorded by the Labour Court that the workmen are entitled to be designated as Turbine Operators is not in accordance with law. The finding recorded by the Labour Court for providing ear-defenders and sound proof cabins to the workmen is upheld.

Consequently the writ petition is partly allowed. The findings recorded by the Labour Court and relief granted to designate the workmen as Turbine Operator is set-aside. The rest of the award is upheld. No order as to costs.

(Rajiv Sharma), Judge

December 26th December, 2007

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